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Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

On June 22, 2006

TOWNSEND and TOWNSEND and CREW LLP

By: *JoAnn Evangelista*  
JoAnn Evangelista

**PATENT**  
Attorney Docket No.: 018563-003300US  
Client Ref. No.: AT-00079

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

CHRISTOPHER THOMAS SEPE

Application No.: 09/621,716

Filed: July 24, 2000

For: DELIVERY INFORMATION  
SYSTEMS AND METHODS

Customer No.: 46718

Confirmation No. 6440

Examiner: MEINECKE DIAZ,  
SUSANNA M

Technology Center/Art Unit: 3623

### **RESPONSE**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed January 11, 2006, Applicant respectfully requests that all rejections be withdrawn in view of the following comments.

All pending claims were rejected over U.S. Patent Publication 2002/0082865 to Bianco et al. in view of U.S. Patent Publication 2002/0077850 to McMenimen et al. Such rejections are respectfully traversed since neither of these references is available as prior art under 35 USC §102(e).

PATENT

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As the Examiner is certainly aware, references relied on under 35 USC §103(a) must be available as prior art under an appropriate section of 35 USC §102. See MPEP §706.2(a). As both the Bianco and the McMenimen publications were filed after the filing date of the present application, neither of these publications qualify as prior art. Thus, Applicant respectfully submits that the present rejections must be withdrawn.

Applicant recognizes that each of these publications has a corresponding provisional application which was filed prior to the filing date of the present application. Applicant notes that the provisionals are quite different than the published applications. While Applicant concedes that the disclosures of these provisional applications might be relied on under certain circumstances, to do so the Examiner must point to relevant disclosure in the provisional text. Applicant further wishes to point out that while the provisional application underlying the McMenimen et al. publication was incorporated into that publication by reference, the provisional application underlying the Bianco publication does not appear to have been incorporated by reference. A word search of the publication fails to show an incorporation by reference. Thus, with respect to Bianco et al., the Examiner not only cannot rely on the provisional text as prior art, but must instead find teachings which appear both in the published Bianco application and in the provisional application.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

James M. Heslin  
Reg. No. 29,541

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 650-326-2400  
Fax: 415-576-0300  
Attachments  
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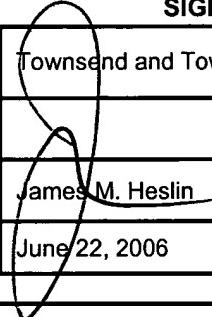
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Filing Date	July 24, 2000
First Named Inventor	SEPE, CHRISTOPHER THOMAS
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Examiner Name	MEINECKE DIAZ, SUSANNA M
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### ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input checked="" type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	<input type="checkbox"/> Return Postcard
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<input type="checkbox"/> Reply to Missing Parts/ Incomplete Application	The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Townsend and Townsend and Crew LLP		
Signature			
Printed name	James M. Heslin		
Date	June 22, 2006	Reg. No.	29,541

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Signature		
Typed or printed name	JoAnn Evangelista	Date
	June 22, 2006	